

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
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May 16, 2011

**MEMORANDUM VIA FACSIMILE**

**TO:** John T. Hansen, Esq. (415-398-2438)  
Mark J. Romeo, Esq. ((415-395-9318)

**FROM:** Judge Dennis Montali

**SUBJECT:** Acosta-Trust Deed Investment, Inc., No. 09-32339

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I have reviewed the declaration of John T. Hansen describing how he calculates the total claim of TDI as of April 30, 2011, and the declaration of Phillip Goldstein setting forth his calculations of the same obligation.

As noted by Mr. Hansen in the Reply, the court is not making a final determination as to which party's calculation is correct, but is doing the calculation on an interim basis in order to determine how much should be retained by the debtors following the close of escrows of the 17th Street and the 18th Street properties.

Mr. Hansen has started with TDI's Exhibit 1 to its proof of claim and backed out default interest, recalculated the payments and concluded that as of April 30, 2011, TDI's claim is \$2,169,214, plus what he calls generous, an additional \$60,000 in attorneys' fees. The evidence does establish, however, that through May 1, 2011, TDI's attorneys' fees are at least \$98,841.38, thus requiring an additional \$38,841.38 to be included on top of the "generous" \$60,000 figure Mr. Hansen used.

The following are the amounts used to calculate TDI's legal fees to date. The first two figures are from the Exhibit 1 to TDI's proof of claim and the remaining six amounts from Mr. Goldstein's declaration and corresponding costs set forth in his calculations.

March 31, 2010	\$26,401.95
April 30, 2010	7,255.27
June 14, 2010	4,030.41
August 24, 2010	30,000.00
January 19, 2011	2,990.59
February 18, 2011	3,539.60
March 29, 2011	12,714.05
May 1, 2011	<u>11,909.51</u>
	\$98,841.38

Further, Exhibit 1 to TDI's proof of claim establishes that a trustee fee of \$8,360 was paid and late charges totaling \$14,299.98 were incurred. Thus, those two figures must be added to TDI's claim as of April 30.

The proof of claim exhibit also shows miscellaneous costs and a trustee's sale guaranty totaling \$4,157.63; against that figure is a trust account balance of \$4,030.41, leaving an additional amount of the claim to be included for these purposes at \$127.22.

Mr. Goldstein's declaration establishes that TDI paid \$55,956.73 in taxes on September 1, 2010.

The court will exclude from the preliminary estimate the sum of \$1,586.29 as "interest on legal fees" in the proof of claim exhibit, plus unexplained costs in the Goldstein recalculation as follows:

August 20, 2010	\$1,554.53
February 28, 2011	800.00

In summary, the Hansen declaration's estimate of "roughly" \$2,230,000 (\$2,169,214 plus \$60,000) must be increased as follows:

Additional Attorney's Fees	\$38,841.38
Trustee's Fee	8,360.00
Taxes	55,956.73
Late Charge	14,299.98
Miscellaneous Costs (Net)	<u>127.22</u>
TOTAL	\$117,585.31

From the foregoing the estimated claim (without default interest and the excluded charges noted above) is fixed at \$2,347,585.31.